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MONTHLY BENEFIT News and Developments

Employee Benefits

Pension Plan and Participant Advocate's Report

The Pension Benefit Guaranty Corporation's *2017 Annual Report of the Participant and Plan Sponsor Advocate* summarizes the assistance requests the office has received, identifies significant problems and legislative and regulatory changes to address the problems, and assesses actions taken to correct issues found in previous annual reports. The report newly includes in an Appendix a study of pension de-risking, focusing on PBGC and congressional actions that may slow pension de-risking activity, and highlighting the drivers and causes of de-risking. The study found that reducing PBGC single-employer premium levels or stemming their rapid growth is likely to decrease risk transfer activity.

Upcoming Key Dates

3/2/18 – Revised deadline for health plans and insurers to provide Forms 1095-B and 1095-C to individuals regarding minimum essential coverage.

4/2/18 – Revised applicability date of DoL's final rule on disability benefits claims procedures.

4/30/18 – Deadline for publicly traded companies to provide pay-ratio disclosures on SEC Form 10-K and/or registration, proxy, or information statements for fiscal years beginning on or after 1/1/2017.

6/15/18 – Expiration of IRS temporary rule on participant-voting process when a sponsor of a multiemployer pension plan in "critical and declining status" proposes to reduce benefits.

7/31/18 – Reporting and payment of PCORI fee by affected self-insured group health plans and insurance issuers for plan/policy year ending in 2017.

Legislative Activity on the Benefits Front

Facing a Jan. 19 federal government shutdown due to the inability to agree to agency funding for the fiscal year that began last October, members of Congress ultimately agreed to another short-term "continuing resolution" (CR) that keeps the government operating through Feb. 8. But the agreement was reached only after a three-day shutdown, as Republicans forced Democrats to approve the CR by including funding for the popular Children's Health Insurance Program for six years. Senate Democrats failed in their effort to have the CR include provisions addressing the status of individuals ("Dreamers") brought to the U.S. as children without documentation, but they obtained a Senate Majority Leader Mitch McConnell's (R-KY) commitment to tackle the issue if an agreement regarding the Deferred Action for Childhood Arrivals (DACA) program is not reached by Feb. 8.

The new CR, which the President signed on Jan. 22, also includes a delay for three Affordable Care Act (ACA) taxes:

- a delay – for two additional years, until 2022 – of the implementation of the excise tax on high-cost employer-provided healthcare coverage (the "Cadillac" tax);
- a one-year moratorium (for calendar year 2019) on the annual excise tax imposed on health insurers; and
- a two-year extension on the moratorium on the 2.3% excise tax imposed on the sale of medical devices (retroactive from Dec. 31, 2017, through 2019).

Another Stop-Gap Funding Measure Expected

With limited days of work scheduled in January, Congress is not expected to reach any agreement on funding the government for the remainder of the 2018 fiscal year. Competing interests across party lines and within the parties – particularly among Republicans – are creating divisions that appear difficult to reconcile. Thus, another CR appears increasingly likely. Longer term, individual appropriations bills for the various agencies will likely be folded into a single omnibus funding measure. If that ultimately prevails, provisions that directly or indirectly affect employers' benefits and compensation programs could be swept in, including technical corrections to the tax law, tax "extenders," repeal of the employer mandate under the ACA, health insurance market stabilization, and retirement plan-related items under additional hurricane relief funding.

Complicating Matters: Lifting of the Debt Ceiling

Congress also must address the need to raise the federal government's borrowing authority. The Treasury Secretary urged Congress to raise the debt ceiling by Feb. 28, as the agency has been using "extraordinary measures" to prevent the U.S. from defaulting on its obligations. The Congressional Budget Office, revising its December report's late March/early April default date and noting revenue losses due to the enactment of the tax law, warned in January of the need to raise the debt ceiling by the first half of March or "the government would be unable to pay its obligations fully, and it would delay making payments for its activities, default on its debt obligations, or both."

Census on Public Pensions

The U.S. Census Bureau released *Summary of the Quarterly Survey of Public Pensions for 2017, Q3*, showing that for the 100 largest public-employee pension systems in the country, assets (cash and investments) totaled $3,691.1 billion in the third quarter of 2017, increasing by 2.8% from the 2017 second-quarter level of $3,590.7 billion. Compared to the same quarter in 2016, assets for these major public pension systems increased 9.0% from $3,386.4 billion, continuing the growth trend that began in the third quarter of 2015.

DoL on Multiemployer Pension Plans

The Department of Labor's Employee Benefits Security Administration released a September 2017 report, *Final report: Multiemployer Plans: Their Current Circumstances in Historical Context*, which analyzes two policy options that could be implemented to address the problems facing critical-and-declining plans: alleviating the burden of orphaned beneficiaries on plans; and providing low-rate or government loans to the plans. The report acknowledges that either option costs money, and that a case can be made for approaches that involve contributions from employers, plan participants, and taxpayers to bear some of the burden.

Tax Revenues and Deficits

The Congressional Budget Office and the Joint Committee on Taxation released two reports covering revenues and deficits:

- *Estimated Revenue Effects of the Revenue Provisions Contained In the "Extension of Continuing Appropriations Act, 2018," As Passed By the Congress On January 22, 2018*, which provides a cost estimate of the healthcare taxes that were delayed under the law. The report notes that extending the moratorium on the medical device tax will cost $3.8 billion over 10 years; suspending the health insurer annual fee will cost $12.7 billion; and delaying the "Cadillac" tax on high-cost plans will cost $14.8 billion.

- *Estimated Deficits and Debt under the Conference Agreement* projects federal deficits to increase over 2018-2027 by $1.5 trillion (not including any macroeconomic effects), with additional debt service boosting the deficit to $1.8 trillion. These higher deficits would lead to debt held by the public increasing from the 91.2% of gross domestic product in a June 2017 baseline to 97.5%.

Regulatory Roundup

From the Department of Treasury/IRS:

- *Notice 2018-14* providing guidance on withholding rules for 2018, due to the enactment in December of the Tax Cuts and Jobs Act.
- *Notice 1036* and *Frequently Asked Questions*, which provide the 2018 updated income-tax withholding tables.
- *Circular E (Publication 15), Employer's Tax Guide*, which includes the Percentage Method Tables and Wage Bracket Method Tables for withholding on incomes in 2018.
- *Reporting and Disclosure Guide* for retirement plan sponsors or administrators.
- *2017 Form 5500-EZ*, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan* and *Instructions*.
- *Private Letter Ruling 201803006*, stating that the interest rate lookback month for a cash balance plan's preconversion benefit can be amended.
- A *web posting* containing four questions and answers on recharacterizations of Roth rollovers and conversions.
- A *web update* providing guidance in the form of questions and answers on the Affordable Care Act's (ACA) health insurance provider fees, including about the 2017 and 2019 moratoriums.

From the Department of Labor:

- A *proposed rule* to broaden the criteria under ERISA for determining when employers may join together in an employer group or association, thereby qualifying as an association health plan.
- A *chart* showing that nearly one in five workers had access to financial planning benefits in 2017.
- A *chart* showing that 39% of private industry workers and 63% of state and local government workers had access to wellness programs in 2017.

From the Pension Benefit Guaranty Corporation:

- A *final rule* adjusting maximum civil penalties for certain multiemployer pension plan notices.
- *Comprehensive Premium Filing Instructions for 2018 Plan Years*, along with an *announcement* that My PAA is ready to accept electronic premium filings for plan years beginning in 2018.

From the Department of Health and Human Services:

- A *proposed rule* that would provide conscience-based protections for individuals and entities with objections to certain activities based on their religious belief and moral convictions, under DHHS-administered laws, regulations, programs, and activities.
- A *news release* announcing the formation of a new Conscience and Religious Freedom Division in the HHS Office for Civil Rights (OCR).
- *2018 Poverty Guidelines*, which are used as an eligibility criterion by Medicaid and other federal programs.

From the Equal Employment Opportunity Commission:

- A *final rule* containing the inflation-adjusted civil monetary penalty for a violation of the notice-posting requirements in Title VII of the Civil Rights, the Americans with Disabilities Act, and the Genetic Information Non-Discrimination Act.
- An *announcement* that the agency has completed its mailing of the *2017 EEO-1 Survey* Notification Letters and reminding affected employers that they must submit the employment data by race/ethnicity, gender, and job categories by March 31, 2018.